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*The Commonwealth of Massachusetts*

HOUSE POST AUDIT AND OVERSIGHT BUREAU

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**HOUSE POST AUDIT & OVERSIGHT BUREAU**  
**REPORT ON**  
**TAUNTON STATE HOSPITAL**

October, 1997

GOVERNMENT DOCUMENTS  
COLLECTION

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# **HOUSE POST AUDIT AND OVERSIGHT BUREAU**

## **REPORT ON** **TAUNTON STATE HOSPITAL**

### **I. INTRODUCTION**

The Bureau conducted a comprehensive review of the process by which certain renovations were completed at the Taunton State Hospital, a facility for the mentally ill. The Division of Capital Planning and Operations (DCPO), the Department of Mental Health (DMH) and Taunton State Hospital (TSH) all participated in the development of the project.

The Bureau's examination was limited to a review of the process by which certain renovations were completed at the Cain Building, which was just one of several buildings at TSH scheduled for renovation and repair. In the course of its review, the Bureau conducted a site visit, interviewed various staff, and reviewed hundreds of documents including study and design materials, drawings, specifications, as well as other materials, and met several times with officials from DCPO including the Commissioner. The Bureau also met with officials from the Office of the Inspector General.

This report focuses on a few examples of problems that developed with the project. Not all problems associated with the project are included in this report. Based upon this Bureau examination and other studies, the Bureau believes that its examples represent the types of deficiencies that can occur on public construction projects if the proper level of communication between DCPO, the user agency, and the contractor is not achieved. A copy of DCPO's and DMH's responses are attached as Appendix I.



## **II. FINDINGS**

- The Bureau's review of the current method of contractor evaluation revealed inconsistencies and anomalies. Under the current statutory scheme and DCPO procedures, the Commonwealth does not have a system that can definitively, effectively identify contractor deficiencies. Some of DCPO's problems on particular projects in part can be attributed to the deficiencies in the evaluation system.
- During the renovations of the Cain building, there were several avoidable problems that caused substantial delays, increased cost, and diminished the value of the project actually received by the Commonwealth .
- The Bureau found that some of the problems such as the incorrect size of 163 doors could have been rectified by DCPO prior to the completion of construction. The Bureau also found that problems such as poor drainage of 7 showers and an inadequate ventilation system should have been foreseen by DCPO.
- DCPO's implementation of the statutorily required two-step design study process did not ensure that the doors of the Cain building were of sufficient size to accommodate hospital beds and the needs of the user agency, DMH. This problem could have been avoided by clearer communication between DCPO as the service agency and DMH as the ultimate user and thereby could have avoided safety and security issues for DMH.
- The Bureau's review of the two-step design study process indicated that it can build in problems between the user agency and DCPO.





### **III. RECOMMENDATIONS**

1. The Bureau finds that some public construction projects continue to have problems with cost overruns, use of inappropriate materials, and extensive and unnecessary delays. Some of the current provisions of the existing statutory scheme appear to generate results that are contrary to what was intended. The Bureau also found evidence that the process of contractor certification needs to be revised. Allowing awarding authorities to make selections of contractors with the best performance ratings rather than simply selecting the low bidders may improve state construction. The Bureau's review of several projects leads it to believe that the current scheme of selecting the lowest responsible bidder without a solid evaluation and qualification process in place oftentimes builds in cost overruns and unnecessary reliance on change orders.

2. The contractor certification process should be reevaluated to clearly identify recurrent problems with contractors. The Bureau understands that DCPO has recently revised and improved its certification process since the Taunton State Hospital project. While the Bureau believes DCPO has taken some important steps in this area, it also believes statutory changes are required. The Bureau believes that the changes developed by DCPO in response to the Bureau's inquiry are steps in the right direction. (see Appendix II).

3. Tighter controls should be implemented regarding so-called equal or better substitutions of materials and goods. A contractor making equal or better substitutions should be liable for all damages, without negotiation with DCPO, in the event that the substituted goods are determined to be inferior. Contractors should be required to take





immediate remedial action at their own expense if substituted goods are found to be inferior. DCPO must insure strict compliance with procedures governing substitutions.

4. The process by which a contractor is allowed to make substitutions with credits to the Commonwealth should be carefully evaluated. DCPO's use of credits as a way of keeping costs down can result and even inadvertently encourage substandard construction. The current process by which monetary credits for substitutions are calculated should be closely scrutinized.

5. DCPO should take a more aggressive role in the design study phase to ensure that the user agency is being realistic about its assessment of needs for the construction and the most cost effective way to meet those needs. User agencies need to understand that DCPO has both a service and oversight role on construction projects.

6. The Bureau recognizes that DCPO serves a dual role as both watchdog and a service agency. The Bureau believes that given DCPO's broad range of responsibilities and substantial workload, the agency needs additional resources to properly implement the tasks the legislature has mandated that it perform.

7. Both DCPO and user agencies must establish open communications and solid working relationships on their public construction projects. DCPO must assert itself in a manner that provides the agency with the type of facility it needs within the budget provided. Some of the problems observed and examined by the Bureau at the Cain Building were easily identifiable and clearly avoidable if both agencies worked together effectively. While DMH is the ultimate user, DCPO is the agency charged with oversight of construction issues. User agencies must avail themselves of construction and design



expertise that DCPO can provide to construction and renovation projects. In this particular case, DCPO should have corrected these clearly avoidable defects in the Cain building.

8. The Bureau finds that based upon this review and others, the two-step design study process builds in the potential for problems. The fact that the design study firms are precluded from bidding on final design work results in unnecessary delays and can generate communications problems between user agencies, designers, construction personnel and DCPO. Some of the problems identified in the Taunton State project may have been avoided if the same firm was involved in both processes. The Bureau believes that adequate statutory safeguards can be added to the public construction statutes that accomplish the same results intended by the two-step design process. By building in safeguards that limit fees for final design and imposing strict limits on project size and scope, much can be gained in terms of consistency of design and avoidance of delays.

#### **IV. BRIEF OVERVIEW OF DIVISION OF CAPITAL PLANNING AND OPERATIONS (DCPO) PROCESS**

##### **Background:**

The Division of Capital Planning and Operations (DCPO) was created by statute in 1980 as part of a larger reform package. Serious reforms were found to be necessary after the Ward commission reported on scandals involving political favors and corruption involving construction contracts being awarded to unqualified contractors. As a result, contingent fees were prohibited, truthfulness of all information in the designer's



application became a condition of the contract award, and material misrepresentations in the designer's application became grounds for termination of the contract.

### **The Current Framework:**

As an initial matter, a determination is made as to whether or not construction is warranted. If construction is required and the estimated construction cost is \$100,000 or more, a Design Selection Board selects a designer. The designer conducts an appropriate study to determine the approach and design alternatives. During the study process, input is received by DCPO from various bodies which can include a Project Advisory Group, a Community Review Committee, and an Oversight Committee.

After completion of the study, the user agency approves the study, the DCPO Commissioner certifies it, and the Design Selection Board secures, by law, a different architect to prepare a final design. Upon the design's completion, the user agency approves the final plans. Public bidding on the project occurs and the lowest responsible and eligible bidder is awarded and completes the construction contract. The current two step design process that mandates that two different architectural firms do preliminary and final design is unique to public construction projects.

## **V. BACKGROUND TO TAUNTON STATE HOSPITAL**

Taunton State Hospital is a public psychiatric facility located in Taunton, Massachusetts. It consists of numerous buildings on a 140 acre campus. Many of the buildings were built in the 1930's including the Cain Building (built in 1937) but some were constructed as early as the 1850's and do not meet the stricter standards and codes





of today. At its peak population in the 1960's, Taunton State Hospital served 2,000 people with mental illness. Currently, the client population is much smaller, with approximately 336 patients being served on the campus. Prior to completion of the renovations, these TSH clients were all housed in the only two buildings fit for habitation.

## **VI. TAUNTON STATE RENOVATIONS - THE CAIN BUILDING**

The Cain Building renovations project, which was the principal focus of the Bureau's report, was one part of a larger renovation project at TSH. The "1989 Master Plan" for Taunton State was reviewed by the Bureau, and the problems regarding the renovations of the Cain Building became the focal point of the inquiry. According to DCPO documents, the master plan outlines construction and renovation options and requirements for numerous buildings in one location. Such master plans generally contemplate a series of future interrelated projects, according to these same DCPO documents.

The Taunton State project included renovation of numerous buildings which had fallen into disrepair from age, non-use, and lack of maintenance. The master plan for the TSH project was completed in December of 1989 with renovation work commencing in 1990. The first phase which included several buildings, was estimated to cost approximately 17 million dollars. The Cain building renovations were scheduled to be completed (and were completed) in the first phase of this larger project, according to the





master plan. The entire campus project of the master plan was estimated to cost about 60 million dollars, according to DCPO.

The Cain renovations were proposed in order to reduce overcrowding in other buildings by using Cain to house 129 patients, according to documents reviewed by the Bureau. The particular renovations for the Cain building included new windows, a new HVAC system, interior reconfiguration of spaces, new finishes, the installation of sprinklers and an upgraded fire alarm system, elevator repairs, and general long-delayed maintenance repairs. The original estimated cost for the renovations of the Cain building was between 4 and 5 million dollars (based on 1989 dollars). The final project cost was slightly less than 7.1 million dollars, according to DCPO documents. However, the Bureau was not able to calculate the actual cost of the renovations because several problems with the project have yet to be remedied. The Bureau has concerns that the substitution process needs strong oversight so that the contractor is not allowed to make substitutions which result in long term cost implications.

### **Problems with the Renovation Project:**

There were numerous disputes involving the general contractor, subcontractors, DMH, and DCPO during the course of the renovations. Disputes mainly concerned the cost and pace of the renovations, as well as the use of substituted materials. Additional problems relating to the assignment of expenses of some work also arose.

#### **1.) The dispute as to the air handling units:**



As part of the renovations, new air handling units were to be installed. According to documents reviewed by the Bureau, the contract specified that any of three brands of units or any approved equal could be used. In 1992 the contractor requested that a substitution be allowed based on the “or any approved equal” provision. The contractor asserted in writing that the desired substituted units would perform equally as well as the ones called for in the contract. The substituted units were approved based on manufacturer’s data that they would perform as well as the contract units, according to documents prepared by the engineering consultants.

Field tests were required. These field tests were conducted on the installed substituted units, and their performance was memorialized by a July 19, 1994 letter from the consulting engineers. The tests revealed that the substituted units’ performance was inferior to the projected performance of the units called for in the contract.

As a result of the tests, extended negotiations began concerning what would be done. It was agreed that one already installed unit would be replaced with a unit originally called for in the contract. This would be done for testing purposes. If the original unit passed the test, the general contractor would pay the cost of replacement, if the original unit failed, DCPO would pay to remedy the situation.

After the original unit was installed and the test was performed, there was a dispute as to the level of performance of the new units. The contractor asserted in a letter dated January 30, 1995 that given that the original unit was clean and new, it should perform somewhat better than the prior six month old unit. Thus, the contractor wanted DCPO to pay for the replacement.



According to a document of May 25, 1995, the parties finally came to an agreement. The contractor agreed to replace the unit motors with higher power motors instead of replacing the units in their entirety. Thus, the substituted units remained installed, they were simply powered with more powerful motors. Once the motors were changed, DCPO agreed to release \$7,000 that they had been holding pending resolution of the issue.

## **2.) The dispute as to the width of the doors:**

The Bureau received conflicting information as to when and how the issue of the width requirements for the doors came to light. A Taunton State employee and DMH claim that DCPO was aware that wide doors were required in order to transport the elderly bedridden patients from room to room and to fit the food cart through the doors. DCPO said that DMH did not request that the doors be widened until after the door frames were installed and the doors were ordered. The Bureau reviewed documents that indicated that DMH had informed DCPO in writing on July 7, 1993 that the doors were 3' wide and were supposed to be 4'. At the point of that July 7, 1993 letter 80% of the construction was complete according to DCPO. The Bureau also noted documents, drawings, and listings of doors dated May 22, 1992 which clearly indicated the specification of width of doors of 3 feet.

Documents reviewed by the Bureau, including the five volume master plan, indicate that meetings were held and input was sought from TSH regarding doors and other issues. The section of the master plan memorializing the meetings indicates that





metal doors with secure locks were requested by TSH. However there is no indication in the section that the width of doors was an issue at these meetings. DCPO made the ultimate decision to install the doors. It was clear from the records that DCPO learned of the door problem before the doors were received and installed.

According to the assistant commissioner of DCPO in a letter to the Bureau, DCPO decided that delay would be detrimental to the project, consequently, DCPO installed the 3' doors as an interim measure. The DCPO letter added, "DCPO believed it was preferable to change the door width in a separate project with a new contractor."

The Bureau is aware of the reasons for DCPO's acceptance of the smaller sized doors. However, it believes that this approach has burdened the user agency with safety and security issues and may result in a more expensive and disruptive solution. The failure to resolve this issue at an early stage is indicative of a lack of communication through the design study process. This was a situation where agency needs, if clearly articulated and understood, could easily have been met.

The Bureau now understands that TSH officials want 163 doors widened, but to date none of the doors has been so modified. DMH has also expressed concerns about the disruption to patients in the event that the new doors are installed while the clients are occupying space. The Bureau notes that the unused surplus space that was built as part of this project could possibly be used as swing space during replacement of the doors. DCPO has recommended replacement of 32 of the doors to accommodate the non-ambulatory patients and limit the cost and disruption of the remedial actions. In the meantime, geriatric and restrained patients are manually transferred from one bed to



another when one of the smaller doors in the Cain building is encountered during movement of patients.

Many of the doors in the Cain building were supposed to be made of thick metal. The Bureau's inspection of the doors indicated that some of the doors were already in need of replacement as they were badly worn and damaged. Given the day to day use of the facility, heavy duty metal doors were clearly required. In this case, the Bureau found that DCPO was not sensitive enough to the needs and ultimate uses of the occupying agency with respect to these items.

### **3.) The dispute as to the pitch of the showers and height of the bathtubs:**

According to DCPO documents, some of the showers overflowed initially.

According to Taunton State employees, they still overflow. DCPO asserts that the pitch of the shower floors met code requirements and that it was unclear whether the overflow resulted from design, construction, or method of use by some patients. Taunton State workers assert that the problem is not limited to only certain patients and that the difference in the pitch is clearly observable.

DCPO, in correspondence with the Bureau, contends that neither DMH nor Taunton State indicated that they needed bathtubs of a certain height. DCPO noted that DMH approved the plans. DCPO proposes that DMH purchase chair lifts as a solution to the problem.

DCPO speculated in a letter to the Bureau that, "certain of these patients may be able to use showers more easily than bathtubs." However, the master plan stated plainly



and repeatedly that the bathtubs were for acute inpatients who were unable to use showers.

DCPO asserts that they understood the Taunton State patients to be ambulatory, however the master plan indicates, “geriatric population will require space for wheelchairs, bed lifts, and fully accessible toilet and bath facilities...Bedridden patients will be in the skilled nursing ward; the other geriatric patients are extended care.” There are numerous references to the geriatric population who need handrails on the walls, assisted tubs, and adequate space for wheelchair clearance. Clearly not all patients are ambulatory and DCPO’s master plan acknowledges that fact. Here again, these facts support the idea of poor communication between the design study and final design phase.

#### **4.) The contractor certification process:**

The Bureau’s particular review of the contractor certification process revealed several deficiencies. During the time relevant to this report, it did not appear that the Commonwealth had in place a system that allowed it to make definitive judgments about contractor performance based upon analogous construction projects. The Bureau’s review indicated that the evaluation process failed to reconcile glaring differences in evaluations. In some cases it was difficult to believe that the widely varying evaluations were referring to the same contractor given the comments made. While DCPO has made several positive adjustments in this area, the Bureau believes that more follow-up is needed in examining evaluations received by awarding authorities. When glaring anomalies are encountered, a detailed follow-up procedure is warranted.





The Bureau also believes that modifications are needed to the process of challenging evaluations. The current system allowing challenged evaluations to be thrown out places DCPO at a clear disadvantage when dealing with contractors over performance issues. The Bureau believes that legislative changes similar to those recommended in Appendix II would be one way to improve performance in this area.

#### **5.) Other issues:**

The Bureau also evaluated other issues that arose during the project. One of the concerns raised by TSH employees involved construction issues such as the leaving of tools in plain view of patients at the facility. Other construction practices created undesirable if not dangerous conditions for both employees and patients. DCPO must work closely with the user agencies to avoid problems in that area.

The Bureau also noted that new, undesigned, and unused space was created as part of the project. In the event that excess capacity is built into a project the need should be clearly established and justified. The Bureau was informed that DMH has requested the additional space despite the fact that it had no immediate plans to use it. Here again the Bureau believes that the construction process must result in the most cost effective utilization of scarce capital dollars. DCPO and the user agency must work hand in hand to achieve maximum utilization of building space and limited construction dollars.

The Bureau believes on the basis of its own reviews, as well as problems identified by other oversight agencies reviewing other projects, that a thorough review of the two step design process and the contractor certification process is warranted.





## VII. CONCLUSION

The Bureau's review of the problems associated with some of the renovations at Taunton State Hospital indicated that most of them were clearly avoidable. Because of poor communication between agencies, DCPO did not act expeditiously on a number of issues that resulted in significant problems for the user agency.

The Bureau believes that DCPO has a substantial oversight role in the public construction process. Given its mandate and current level of staff, additional resources must be committed if the agency is to serve both as a watchdog and as a service provider to the ultimate users of the building. The Bureau found ample support for the notion that DCPO does not have sufficient resources to meet its statutory mandate.

The legislature established DCPO with the intent of providing an oversight and reporting mechanism for the legislature on public construction projects. Despite being given added responsibilities for leasing and surplus property in addition to construction and renovation, DCPO's operating budget has been reduced significantly since FY 1990.

The Bureau finds that DCPO cannot effectively meet its multiple mandates without a substantial increase in its operating budget. The Bureau believes that given the huge costs of these bond funded capital projects, it is penny wise and pound foolish to spend hundreds of millions of dollars of construction funds without an adequate level of DCPO oversight.

The Bureau believes that DCPO and the Inspector General's Office should carefully reexamine the current two-step design process to provide mechanisms to make



the process more efficient. The Bureau also believes that the Inspector General and DCPO can work toward developing acceptable criteria that can improve the contractor certification process.

The Bureau also finds that while DCPO has generated some positive changes to the contractor certification process, more is needed. The Bureau recommends that DCPO and the Committee work cooperatively to improve the process and to recommend legislation that avoids or reduces the likelihood that deficiencies found in this project will recur.





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October 29, 1997

Representative James H. Fagan  
Chairman  
House Post Audit and Oversight Committee  
State House - Room 146  
Boston, MA 02133

Dear Chairman Fagan:

The Division of Capital Planning and Operations successfully manages over \$200 million in state construction projects annually. We take pride in the completion of quality projects which benefit the taxpayer in the areas of Higher Education, Public Safety, Human Services, Environmental Affairs and the Courts.

While DCPO has established a record of success in public construction, the renovation project for the Cain Building at Taunton State Hospital illustrates quite effectively why changes are needed in the statutory scheme that DCPO is required to implement.

As noted in the Bureau's report, the two-step study and design process, which requires the state to have two different architectural firms for each building project, one to identify the design requirements and parameters and a second to develop the final design, has created problems for public construction projects that the Ward Commission did not anticipate at the time DCPO was created. We agree with the Bureau that the time has come for a thorough review of that two-step process. DCPO filed House Bill No. 17 last year which would eliminate the two-step study design process. It is currently in the Joint Committee on State Administration.

Over the past few years, DCPO has made several changes to improve the contractor certification process to the greatest extent possible within the constraints of the current statute, affording greater protection to the Commonwealth and municipal awarding authorities. However, as a result of the Bureau's concerns, DCPO has developed possible statutory changes to afford the Commonwealth and municipal





awarding authorities even greater protection under the law. These changes, if adopted, would permit the rejection of the low bidder on a project if that low bid contractor has had two or more unsatisfactory project evaluations. In addition, DCPO would have greater latitude to reduce the classes of work and dollar amount on which a contractor is eligible to bid. Our proposal would also afford municipal awarding authorities protection from litigation by contracting firms evaluated by these awarding authorities as poor performers.

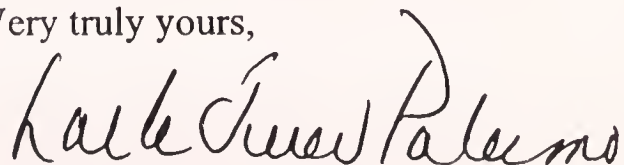
The Bureau also recognized that DCPO needs additional resources in order to properly implement the tasks the Legislature has mandated that it perform. I recently wrote to Chairmen of the Senate Ways and Means Committee and the House Ways and Means Committee to express my concern about the agency's diminishing operating budget and to urge the Legislature to increase DCPO's operating appropriation for fiscal year 1999.

In connection with its review of the renovation project at Taunton State Hospital, the Bureau focused on some particular items. The quality of the air handling units was hotly disputed by the contractor and I think it is important to note that absent DCPO's aggressive and tenacious enforcement of the "or equal" clause, no changes whatsoever would have been made to the air handling units. As for the width of the doors and the height of the bathtubs, we agree that communications between DCPO and DMH were not ideal and communications suffered as a result of the cumbersome two-step study design process required by law.

A comprehensive renovation of an existing building in excess of 50 years old is by definition a difficult construction project. These inherent project difficulties were magnified by inadequacies within existing public construction law which the Bureau and DCPO have identified and which should be addressed through statutory change.

Thank you for this opportunity to comment on the Bureau's report, and for working with DCPO to identify actions that can be taken by the agency and the Legislature together to enhance DCPO's ability to accomplish our important public construction mission.

Very truly yours,

A handwritten signature in dark ink, reading "Lark Jurev Palermo". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Lark Jurev Palermo  
Commissioner





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August 13, 1997

Mr. Thomas W. Hammond, Jr.  
 Director and General Counsel  
 House Post Audit and Oversight Bureau  
 Room 146, State House  
 Boston, Ma 02133-1053

Dear Mr. Hammond:

Thank you for forwarding the recent letter from the Division of Capital Planning and Operations (DCPO) concerning renovations to the Cain Building at Taunton State Hospital. I appreciate the opportunity to provide the Department of Mental Health's perspective on this construction project. It is my understanding from reviewing various documents, that the renovations were designed in part to meet life safety codes, ADA and accessibility requirements, accreditation and certification standards; and to provide a therapeutically beneficial treatment environment.

Unfortunately, the Department must clarify the following points raised in DCPO's correspondence:

1. The Cain Building renovations did not result in Joint Commission on Accreditation of Healthcare Organizations (JCAHO) accreditation of the hospital. Full hospital accreditation was formally granted in January 1994, prior to the completion of the renovation project.
2. JCAHO is a quality measurement; it is not a requirement for receipt of federal reimbursement.
3. There was no change in Taunton State Hospital's reimbursement rate as a result of these renovations. The hospital's beds had been certified for Health Care Finance Administration (HCFA) reimbursement by the Department of Public Health long before the construction project.
4. There were a series of meetings between DCPO, the study architect/designer and hospital staff to ensure that the overall design of the Cain Building met the hospital functional need for on-ward programming. The hospital relied on this professional expertise for basic specification requirements such as door size openings; in order to





meet ADA requirements, including handicap accessibility, door width is a basic issue. Taunton State Hospital has always treated non-ambulatory patients as part of its general population and the movement of beds from one room to another is standard psychiatric hospital operating procedure. Thirty inch door widths are a significant barrier.

5. The proposed substitution for air handling units and subsequent inadequacies that were identified resulted in a project delay lasting from February to October 1995. The consequences of this delay increased costs to the Commonwealth including expiration of warranties, moving and storage costs of furnishings. In hindsight, this time period offered an opportunity to correct the door width problem.
6. There is no significant issue with the number of showers available for patient use; the ongoing concern is shower drainage. The pitch of the shower floors may meet code requirements; however, the reality is that the water overflows into the hallway creating a serious safety issue.

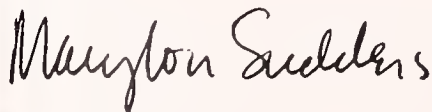
DCPO correctly states that DMH had to approve the design prior to commencement of renovations. DMH relies on the technical expertise of DCPO and its architect/designer to ensure that the structural and construction specifications meet DMH's operational needs.

DMH has high expectations for the renovation of our facilities given a limited capital budget and desire to adapt antiquated physical plants to meet current treatment requirements. Thus, from DMH's perspective, the Cain Building project did not meet certain fundamental needs of staff and patients. While the work may have met state building and related codes, it failed to allow for door openings wide enough to accommodate movement of beds and to provide the appropriate pitch for proper shower floor drainage. Further, the substitution of air handling units that did not function to specified standards caused unnecessary delay and cost. Suggestions to remedy deficiencies were made by hospital staff shortly after the work was inspected. DCPO made the decision that it was not in the best interest of the Commonwealth to correct the problems at that time.

I regret the necessity of criticizing the project and reaching a different conclusion from a sister agency. Now DMH and DCPO are working to correct the problems associated with the original Cain building renovations.

If there are any questions, please do not hesitate to contact me.

Sincerely,



Marylou Sudders

cc: Charles D. Baker, Secretary, Executive Office for Administration and Finance  
Lark Jurev Palermo, Commissioner, DCPO







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October 24, 1997

By Hand

Mr. Thomas. W. Hammond, Jr.  
Director and General Counsel  
House Post Audit and Oversight Bureau  
Room 146, State House  
Boston, MA 02133-1053

Dear Mr. Hammond:

Commissioner Palermo called your office today to discuss a few additional comments on the House Post Audit and Oversight Bureau's preliminary report on Taunton State Hospital. She understands that you may be out of the office today, and looks forward to talking with you on Monday. In the meantime, I enclose proposed language to change certain statutory contractor certification provisions, to provide DCPO and awarding authorities with more ability to reject low bidders when they are not qualified to do a project.

I hope the enclosed suggestions are helpful. Please feel free to contact Commissioner Palermo or me if you have any questions about the certification revisions.

Very truly yours,

A handwritten signature in cursive script that reads "Jamie Lewis Keith".

Jamie Lewis Keith  
Assistant Commissioner and  
General Counsel

Enclosure

cc: Lark Jurev Palermo, Commissioner, DCPO



## PROPOSED CHANGES TO THE CERTIFICATE STATUTE (M.G.L. c. 149 §44D)

***Problem** - Each bidder is required to submit an update statement with its bid. The update statement updates for the awarding authority the information provided to DCPO at the time of certification. The Certification Statute requires awarding authorities to consider the information in the low bidder's update statement for the purpose of determining whether the low bidder is "responsible" as defined in G.L. c.149 §44A. The Certification Statute should make it clear that public awarding authorities may also consider the evaluations of the low bidder's performance on comparable projects and other pertinent information concerning the low bidder's qualifications in the DCPO certification file for the purpose of determining whether the low bidder is "responsible," and that the bid of a contractor who has not performed satisfactorily, either on comparable projects, or on two or more projects of any kind may be rejected, notwithstanding that the contractor's performance on its other projects over the past five years has been satisfactory, entitling the contractor to certification.*

**Proposal** - Amend G.L. c.149 §44D(6) as follows:

(6) In determining who is the lowest eligible and responsible bidder as required by paragraph (2) of section forty-four A, the awarding authority shall consider the information submitted by the bidder in the update statement. The awarding authority may also consider the evaluations of the bidder's work obtained by or furnished to the division of capital planning and operations and any information furnished by the bidder in or after the application for certification. Notwithstanding that a contractor may have been certified by the division, an awarding authority, in connection with a particular bid, may review the evaluations of the low bidder's work to determine whether the evaluations of comparable projects performed by such low bidder establish that the bidder is qualified to perform the work on the building project being bid and may reject the bid if the evaluations do not establish that the bidder is so qualified. Such awarding authority may also reject the bid of a low bidder if the division has obtained or received two or more unsatisfactory project evaluations of building projects of any type completed by such low bidder within the past five years. If the awarding authority determines that the low bidder is not responsible and eligible, the awarding authority shall reject the bidder and evaluate the next low bidder in accordance with this section; the awarding authority shall give notice of such action to the division of capital planning and operations.

In determining which is the most advantageous offer, the awarding authority shall consider the information submitted by the offeror on the update statement. The awarding authority may also consider the evaluations of the offeror's furnished to or obtained by the division of capital planning and operations and any information furnished by the bidder in or after the application for certification.





***Problem** - The Certification Statute authorizes DCPO to decertify a contractor upon receipt of additional information concerning the contractor's qualifications. The statute should also expressly authorize a reduction in bidding limits or categories of work to give DCPO greater flexibility in addressing problems concerning a contractor's performance after the contractor has been certified.*

**Proposal** - Amend G.L. c.149 §44D(5) as follows:

(5) The commissioner may, upon receipt of additional information regarding a contractor's qualifications, decertify a contractor or reduce the classes of work and amount of work on which the contractor is eligible to bid during the period for which the contractor was prequalified. Upon such a decision, the commissioner shall follow the procedures established by this section.

***Problem** - Public awarding authorities, their employees and architects are reluctant to provide the contractor evaluations required by G.L. c.149 §44D(7) on projects where a contractor has performed poorly, due to fear of lawsuits brought by contractors demanding significant monetary damages for alleged economic loss. Without these evaluations, DCPO cannot consider these problem projects as part of the certification process, and a contractor with a record of project failures may become certified.*

**Proposal** - Amend G.L. c.149 §44D(7) as follows:

(7) The division of capital planning and operations shall develop a standard contractor evaluation form that shall be completed by every public agency, upon completion of a building project under its control, and submitted to the division for the contractor's qualification file. The official from the public agency, or the architect or engineer responsible for the oversight of the Building construction contract, shall certify that the information contained on the contractor evaluation form represents, to the best of his knowledge, a true and accurate analysis of the contractor's performance record on that contract. No public employee or public employer as defined in section 2 of chapter two hundred and fifty eight, and no architect or engineer shall be liable for any injury or loss to any contractor as a result of the completion of a contractor evaluation form as required by this section unless the individual completing such evaluation form acted in a grossly negligent or malicious manner. The public agency shall mail a copy of the contractor evaluation form to the contractor and the contractor





may, within thirty days, submit a written response to the division disputing any information contained in the evaluation form. The division shall attach any such response to the evaluation form for inclusion in the contractor's qualification file.

